Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Policies and Rules	)	CC Docket No. 94-158
Concerning Operator Service	)	
Providers and Call Aggregators	)	

COMMENTS OF GATEWAY TECHNOLOGIES, INC.

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Dated: March 9, 1995.

SUMMARY

There is no statutory, policy or empirical reason for the Commission to modify its 1991 decision exempting firms providing inmate-only communications services from the unblocking and related requirements applied to call aggregators and Operator Service Providers. Gateway Technologies, Inc., a leading inmate services provider and the first party to propose an inmate services exemption in 1991, submits that the Commission's decision implementing TOCSIA was correct when announced and remains the appropriate policy today. Even if the Commission had the regulatory authority to deviate from the Act by including correctional institutions in the definition of "aggregator" applicable to hotels, motels and airports—which it does not—it should not do so. Extending unblocking requirements to this highly specialized market is not only unjustified, but would fundamentally and improperly curtail the delivery of vital services—as well as sophisticated customer premises equipment—to this nation's local, state and federal correctional facilities.

The NOI is simply wrong in suggesting that there are unresolved issues of inmate service rates that may necessitate a Commission rulemaking. Charges for inmate collect-only services are both regulated by prison administrators (through RFP conditions) and generally comport with OSP industry average "benchmark" rates for collect services. For instance, Gateway's tariffed interstate rates are fully competitive with, and almost identical to, the comparable rates charged by AT&T. Further, as the weight of comments in the pending billed party preference proceeding (CC Docket No. 92-77) showed, there are simply no technical alternatives to current collect-only inmate service arrangements for meeting the substantial, and clearly legitimate, fraud protection and security needs of correctional institutions. Nor can the Commission fairly conclude that access to other carriers for inmate

communications is necessary to prevent rate abuses when it has not once, to date, sought to bring rate enforcement proceedings against any inmate services provider.

There is no factual or regulatory basis, therefore, to issue an NPRM on inmate services in this proceeding. Indeed, the NOI here presents precisely the same rate questions proposed in the 1994 billed party preference Further Notice as a possible reason for application of BPP to correctional institutions. The record in that proceeding demonstrates conclusively that BPP would impose substantial costs and greatly increase problems of fraud and security for correctional institutions. Whatever action the Commission decides to take on inmate services—and Gateway submits none is necessary—should thus occur in Docket 92-77, not in a new rulemaking duplicating the issues and record raised there.

Finally, although the Commission cannot and should not alter its 1991 conclusion exempting correctional institutions from aggregator unblocking requirements, it may want to consider two mechanisms, first suggested by Gateway in the BPP docket, for enhancing consumer awareness in the inmate services market. First, the "double-branding" requirement now proposed for OSPs can be applied to inmate services providers under the Commission's general public interest powers—in fact, Gateway currently double-brands all of its collect traffic. Second, the Commission could require by rule that inmate service rates be quoted in real-time, prior to requesting acceptance by the called party (rather than via a separate "800" call), in order to improve rate awareness and buttress informed end users decisions on whether to accept collect calls placed from prisons and jails. Once again, however, these or any other legitimate rule modifications do not require a new NPRM, but rather should be based on the existing, comprehensive record already compiled on inmate services in the BPP rulemaking.

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Gateway Technologies, Inc. ("Gateway"), by its attorneys, hereby responds to the Commission's Notice of Inquiry ("NOI") inquiring whether the current regulatory treatment of carriers providing inmate-only communications services to correctional institutions should be modified.[1] Gateway, one of the leading firms serving the inmate service market, submits that there is no statutory authority, policy reason or empirical basis for reconsidering the Commission's 1991 decision to exempt inmate service providers and correctional institutions from the unblocking and other requirements applicable to call aggregators and operator service providers.

I. THE COMMISSION'S 1991 REPORT AND ORDER CORRECTLY APPLIED TOCSIA'S PROVISIONS TO EXCLUDE CORRECTIONAL INSTITUTIONS AND INMATE SERVICE PROVIDERS FROM THE ACT'S UNBLOCKING REQUIREMENTS

Gateway was the first party to argue to the Commission after enactment of the Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 226 ("TOCSIA"), that correctional institutions are not "aggregators" under the Act.[2]

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[1] Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, FCC 94-352, (released Feb. 8, 1995)("NOI"). The proposed rules in the NPRM portion of this Notice do not relate to inmate services.

[2] Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 90-313, at 7-17 (filed Jan. 22, 1991) ("Gateway 1991 Comments").

TOCSIA specifically defines "aggregator" as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(2)(emphasis supplied). Inmates are certainly not the general public, and are not ordinarily considered "transient" users of prison facilities. Thus, there is no basis under the express language of the statute to extend TOCSIA's unblocking requirements beyond the hotels, airports and other aggregators encompassed by Section 226(a)(2) to federal, state and local correctional institutions.

Exclusion of correctional facilities from the regulations imposed on "aggregators" is also entirely consistent with TOCSIA's purpose to "protect consumers who make interstate operator service calls from pay telephones, hotels, and other public locations against unreasonably high rates."[3] Neither TOCSIA nor its legislative history mentions correctional institutions, and the relevant committee report shows clearly that Congress intended the Act to apply to telephones made available at commercial, governmental and other "public" locations.[4] Correctional institutions have none of the characteristics of a public facility or accommodation, such as hotels or airports. Moreover, the thrust of TOCSIA was that consumers should not be prohibited from reaching their presubscribed interstate carrier merely because they sometimes place calls, when traveling away from home, at public telephones. This overriding purpose is inapplicable to inmates at correctional institutions, who do not have any presubscribed carrier and are not placing calls while traveling.

These statutory considerations compelled the Commission's 1991 decision to exempt inmate-only telephones from the regulations promulgated to implement

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[3] S. Rep. No. 101-439, 101st Cong., 2nd Sess., at 2 (1990).

[4] Id. at 10-11, 19.

TOCSIA.[5] "We conclude that the definition of 'aggregator' does not apply to correctional institutions in situations in which they provide inmate-only phones."[6] Moreover, since correctional institutions are not "aggregators" under the Communications Act, firms providing inmate-only services are likewise not operator service providers ("OSPs"), which are defined derivatively as carriers providing operator-assisted services "initiated from an aggregator location." 47 U.S.C. § 226(a)(7). As the Commission held in the TOCSIA Order, "the carrier providing service to inmate-only phones at correctional institutions would not fall under the definition of 'provider of operator services' as such service is not provided at an 'aggregator' location with respect to such phones."[7]

In addition to these statutory reasons, the Commission's 1991 decision to exempt inmate services was based on its concurrence that there are unique policy considerations applicable to telecommunications services at correctional facilities. Correctional institutions have a distinct mix of extraordinary service requirements in three areas: (1) fraud control; (2) security; and (3) budget management. The harsh prison environment demands certain special precautions against inmate communications fraud and inmates' propensity to use the telephone as an instrument of harassment, including (among other things) disabling inmate access to 1+ services, live operators and calling card services—all of which are particularly vulnerable to abuse—and affirmatively preventing inmates from placing harassing calls to victims, witnesses, judges, 911 emergency services and the like. Over the past decade, entrepreneurial firms such as Gateway have developed equipment and services spe-

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[5] Policies and Rules Concerning Operator Service Providers, Report and Order, 6 FCC Rcd. 2744, 2752 (1991)("TOCSIA Order"), citing Gateway 1991 Comments at 3-4.

[6] Id. at 2752 ¶ 15.

[7] Id. at n.30.

cially designed to meet these unique requirements, which for years remained largely unserved by the major long-distance carriers and OSPs.[8]

At the heart of these innovations lies the restriction of inmate services to collect calls—thus avoiding most line-billing and calling card fraud issues—and blocking inmate access to OSPs and other carriers through restrictions implemented in customized correctional facility customer premises equipment ("CPE").[9] These limitations are fundamentally incompatible with the "open access" model adopted by the Commission pursuant to TOCSIA, which mandates that aggregators make available at their public telephones unblocked access to all OSPs via 800, 950 and 10XXX access code dialing.[10] Recognizing this problem, the Commission's 1991 TOCSIA Order emphasizes that inmate service "presents an exceptional set of circumstances that warrants their exclusion from the regulation[s]" generally applicable to aggregators and OSPs. TOCSIA Order, 6 FCC Rcd. at 2752, ¶ 15. In short, even if TOCSIA's provisions did not by their own terms exclude correctional institutions and inmate service providers, the exceptional circumstances of this unique market would compel the same conclusion as a matter of sound public policy.[11]

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[8] See generally Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No 92-77, at 4-5 (filed Aug. 1, 1994)("Gateway 1994 BPP Comments").

[9] Gateway 1991 Comments at 3.

[10] Unlike public payphones, correctional institutions provide specialized telephones for inmates' exclusive use. These telephones are generally located in a secure area and are not available to the public at large. When correctional institutions issue a request for proposals ("RFP") for telecommunications services, they are not endeavoring to serve the general public or business invitees, but rather to provide telecommunications services for a non-transient, segregated and distinct market, the inmate population.

[11] Following the Commission's 1991 TOCSIA Order, a majority of state public service commissions have similarly exempted inmate services from regulations applicable to public telephone providers, OSPs and aggregators, either by promulgating special rules or permitting waiver of incompatible requirements like unblocking mandates. Currently, 18 states either have separate rules for telecommunications services provided at prisons or have adopted permanent exceptions for inmate services. Two states have pending rules that would differentiate inmate services from other OSP and toll services. And five other states routinely grant waivers to individual providers offering service at prisons. Gateway 1994 BPP Comments at 8 n.9.

II. NOTHING HAS CHANGED TO ALTER THE BASIS FOR THE COMMISSION'S 1991 DECISION EXCLUDING INMATE SERVICES FROM TOCSIA REGULATION

The statutory and market considerations that formed the basis for the Commission's 1991 decision on inmate services remain just as true today as they were four years ago. Nothing has changed to warrant a different interpretation of TOCSIA or to supply a policy reason for application of unblocking and similar regulations to correctional institutions and inmate service providers.

The inmate services market is characterized by entrepreneurial firms structuring their services and equipment to meet the sophisticated, highly specialized communications requirements of correctional facilities. From a competitive perspective, the inmate services market is a perfect illustration of the benefits of the Commission's consistent support for competitive entry and streamlined regulation of both equipment providers and IXCs. To a large extent, the unique needs of correctional institutions have not been satisfied by any of the major long-distance companies, but rather by a smaller subset of entrepreneurial firms that have developed new and unique approaches to the prison market.[12] Rather than relying on network-based controls, firms like Gateway serving correctional institutions utilize advanced CPE—technically tailored to the unique fraud and security needs of correctional institutions—and software supporting an advanced system of remote maintenance and system control.[13]

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[12] See Gateway 1994 BPP Comments at 4.

[13] As Gateway demonstrated in the billed party preference proceeding, correctional institution CPE is more robust, technologically advanced and significantly more expensive than the CPE typically installed by private payphone providers. Id. at 6 n. 3 & Attch, A, ¶ 4.

The inmate services market is robustly competitive. Although the NOI suggests that inmate-only services are provided at what it ambiguously terms "high rates,"[14] there is no evidence that rates for inmate collect calls are so generally exorbitant (or increasing) that Commission regulation is needed in order to create incentives for price competition. To the contrary, unlike the OSP market, where the Commission was flooded with thousands of consumer complaints about operator service rates and access, there has been no comparable massive wave of complaints about inmate-only service rates.[15] Furthermore, most federal, state and county correctional facilities are conscious of their responsibility to deter rate gouging, and include standard provisions in inmate communications RFPs requiring that collect calling rates for inmates be set at or below the rates of some "benchmark" level, typically a dominant OSP such as AT&T.[16] Unlike the public payphone market, therefore, competition in the correctional institution market is based not only on commission levels, but also on the provider's ability to offer reasonable rates for collect calling services. Indeed, comparing Gateway's tariffed interstate rates to those of AT&T and similar major OSPs providing inmate services shows that Gateway's rates are fully competitive with, and almost identical to, the rates of these carriers.[17]

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[14] NOI at ¶ 9.

[15] Compare NOI at ¶ 9 with [TRAC Order]. Other than stating that the Commission has received "numerous informal complaints" regarding inmate services, the NOI does not quantify these complaints or indicate the proportion of complaints—if any—that make cogent or substantiated allegations of unjust or unreasonable rates.

[16] States are especially cognizant of the need to ensure that "the rates charged recipients of inmate calls are reasonable. " Florida Department of Corrections ex parte filing, CC Docket No. 92-77, Aug. 17, 1992 at 1. To accomplish this, states typically utilize a contract that sets AT&T or LEC rates as "the maximum rates which can be charged." Id. See Gateway 1994 BPP Comments at 11; see also, Comments of Value-Added Communications, Inc., CC Docket No. 92-77 at 4 (filed Aug. 1, 1994).

[17] Gateway 1994 BPP Comments at 11 n. 15 & Attch. A at ¶ 8. See Gateway Technologies, Inc., Tariff FCC No. 1, § 3.7 (effective Oct. 17, 1994); AT&T Tariff FCC No. 1, § 3.2.1 (effective Jan. 10, 1995).

While some individual providers may charge collect rates for inmate calling that deviate from reasonable levels, on the whole there is no evidence of widespread rate gouging in this industry. In short, the marketplace is working, and state and local prison systems have the ability (and incentive) to enforce rate reasonableness through the RFP process. Unlike the OSP industry, therefore, there is no market failure warranting Commission intervention here.[18]

Notwithstanding the NOI's other suggestions, there have been no fundamental changes in the inmate services market since release of the 1991 TOCSIA Order. The NOI states that "staff members have been informed in various discussions that inmates are generally restricted to collect calling and that neither the inmate nor the called party has the option of selecting the entity that handles the call." NOI at ¶ 9. Yet this is clearly neither new information nor a new development. The collect calling restriction and denial of carrier choice for inmate calls formed the precise basis on which Gateway in 1991 asked the Commission to make clear in its regulations implementing TOCSIA that inmate-only services were exempt from unblocking obligations.[19] Indeed, as Gateway and others have pointed out, the Commission's ongoing consideration of billed party preference in CC Docket No. 92-77 makes little sense in the inmate services market because "the Commission has already held under TOCSIA that inmate-only services can restrict access to all but one presubscribed provider and block all traffic other than collect calls."[20] Whether the NOI's discussion reflects only an unfortunate choice of words or a more serious unfamiliarity with the record before the Commission in 1991 as well as in the billed party

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[18] See Gateway 1994 BPP Comments at 12.

[19] Gateway 1991 Comments at 14. As Gateway emphasized, "[a]nalysis of settled law and practice respecting prisoner access to telephone service also confirms the conclusion that Congress likely did not intend to subject correctional institutions, or their serving carriers, to federal regulation."

[20] Gateway 1994 BPP Comments at 9.

preference proceeding, the fact is that there is no rational administrative reason to reverse the exemption from unblocking granted to correctional institutions in the TOCSIA Order.[21]

III. THERE WOULD BE SEVERE PRACTICAL AND LEGAL CONSEQUENCES FROM IMPOSING UNBLOCKING REQUIREMENTS ON CORRECTIONAL INSTITUTION INMATE SERVICES

The NOI's discussion of the collect-only restriction for inmate services also raises the question of whether allowing carrier choice for inmate calls would, as a practical matter, provide increased communications alternatives for inmates and their families. The answer to this questions is unequivocally no. Today's inmate services marketplace has evolved precisely because the only way to provide substantial communications services to inmates is to eliminate and prevent the public's exposure to the severe fraud and security problems that for many years deterred correctional institutions from offering inmates all but the most minimal telephone options.

Correctional institutions do not insist on the collect-only restriction in order to maintain an inmate services "monopoly." To the contrary, as discussed above inmate services are limited to collect calls in order to eliminate line-billing and calling card fraud, two of the largest areas of fraudulent activity in the interstate telephone marketplace. Furthermore, virtually all correctional institutions select an inmate services provider as a result of a competitive bidding process, including in most instances conditions requiring the winning bidder to provide service at rates no higher than those of the relevant dominant carrier. Thus, while there may be no

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[21] Under the Administrative Procedure Act, the Commission must, at the very least, articulate a rationale, record-based reason for reversing a prior decision. State Farm v. Department of Transportation, 463 U.S. 29 (1983). There is nothing close to this for inmate services.

competition to serve inmates after a service contract is signed—that is, competition in the market—there is substantial competition during the RFP process itself—that is, competition for the market.

The importance of the collect calling restriction in inmate services is graphically underscored by the fact that, despite their support for application of billed party preference to correctional institutions, inmate advocacy groups have not challenged and do not oppose the limitation of inmate services to collect calls. Indeed, there is absolutely no debate, even among those IXCs and LECs now supporting application of BPP to prison communications, that correctional institutions must limit all calls to a 0+ collect basis by means of call restrictions.[22] And for at least six years, industry forums have consistently reported to regulators that the unique prison environment necessitates this approach in order to combat fraud and maintain security.[23]

Equally important, it is clear that there is no practical alternative to current inmate service arrangements for meeting these fraud and security requirements. First, as the comments on the Commission's Further Notice in the billed party preference proceeding make clear, there are no technical arrangements available today for defeating inmate fraud at the network level. For instance, Bell Atlantic cogently reported that because "[t]here are no technical advances that solve the problem that occurs when inmates have access to multiple networks and operators," it would be "foolish" to permit carrier choice for inmate services.[24] Opening up inmate communications by allowing choice of carrier would, at the very least, require all OSPs

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[22] See, e.g., MCI ex parte filing, CC Docket No. 92-77, at 1 (Nov. 24, 1993)("call control restrictions," including collect call limitations, are necessary for inmate services). Similarly, Pacific Bell proposes that BPP be conditioned on having call control CPE "required and implemented at all inmate locations" prior to implementation. Pacific Bell Comments, CC Docket No. 92-77, at 3 (filed Aug. 1, 1994).

[23] See Gateway 1994 BPP Comments at 6 n.4.

[24] Bell Atlantic Comments, CC Docket No. 92-77, at 17 (filed Sept. 14, 1994) (emphasis supplied).

to make substantial investments in special anti-fraud measures for the inmate market—even if they have no desire to provide inmate services—that would ultimately be passed on to all ratepayers in increased operator service rates generally.[25]

Second, permitting carrier choice would have devastating financial consequences for correctional institutions, making impossible the current market practice of inmate service providers installing prison CPE free of charge. As Gateway reported in the BPP proceeding, the costs transferred to state and local taxpayers as a result of mandatory unblocking for inmates services would be at least $317 million—far higher even than the Commission's estimate of the nationwide rate benefit for all operator services arising from BPP.[26] Not only is there no countervailing benefit offsetting this huge cost, but there is a significant constitutional question whether the Commission may by regulation interfere with state tax policies by requiring taxpayer financing of correctional institution CPE.[27] Indeed, the more likely result, particularly in this era of strained governmental budgets, is that state and local governments would refuse to fund correctional institution CPE, thus harming inmates by reducing their access to telephone services.[28]

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[25] See Gateway Ex Parte Filing, CC Docket No. 92-77, at 5-6 (filed Feb. 1, 1995)("Gateway BPP Ex Parte")

[26] Gateway 1994 BPP Comments at 2 n. 3.

[27] Id. at 14 n. 25; see Gateway 1991 Comments at 17 n.11. Similar constitutional issues within the federal government would arise if the Commission required correctional institutions to offer carrier choice for inmate services. The Federal Bureau of Prisons currently is in the process of switching from a collect-call based inmate system to a debit calling arrangement. See Federal Bureau of Prisons Comments, CC Docket No. 92-77, at 2 (filed Aug. 1, 1994). Even the new debit system, however, routes all inmate calls to a single carrier. An FCC order directing carrier choice would therefore create a direct conflict between the policies of an executive branch agency (Department of Justice) and an independent regulatory agency (the Commission), implicating significant separation of powers issues.

[28] In the absence of carrier-financed CPE, budget constraints and the political difficulties involved in spending tax revenues for so-called inmate "amenities," such as telephones, would seriously impair government's ability to maintain the current ratio of inmates to CPE. In other words, applying carrier choice for inmate services would cause a substantial reduction in the number of telephones available to inmates, resulting in less frequent communication between inmates and their families. Reply Comments

Third, requiring unblocking for inmate services would exponentially increase opportunities for inmate fraud and abuse. Currently, information service providers give the correctional facilities the CPE free of charge. If the blocking rules are implemented, the information providers will no longer have the incentive or opportunity to continue this practice.[29] From a technical standpoint, enabling access to any OSP through unblocking would allow inmates to easily circumvent the fraud safeguards currently provided at the CPE level and would in many if not most cases permit inmates to connect with OSPs' calling card databases and live operator services, like any other non-inmate callers. The consequences would be severe.[30]

Calling card fraud is already a widespread problem in the telecommunications industry. Yet the "Grand Central Station" scenario of a fraud artist stealing calling card numbers as he looks through binoculars at callers dialing their card numbers would be insignificant compared with the massive potential of inmate calling card fraud. As the American Jail Association reports, "[a]ll it will take is for a single inmate to find an unsuspecting carrier . . . that is ill-equipped and untrained to handle inmate calls" to cause "a major outbreak of telephone criminal activity from our jails" as the identity of that single carrier "becomes widely known" throughout the inmate population.[31] Therefore, because carrier choice would route 0+ inmate calls to OSPs' calling card databases and to live operators, it would expose correctional institutions and OSPs to a huge new potential area for inmate fraud

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of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 at 9-10, 15-17 (Gateway 1994 BPP Reply Comments).

[29] Gateway BPP Ex Parte at 2-3.

[30] See Id at 3-4.

[31] Letter from Stephen J. Ingley, AJA, to Hon. Reed E. Hundt, FCC, CC Docket No. 92-77, at 3 (July 26, 1994).

that is currently prevented entirely by routing inmate calls to a single "default" carrier.[32]

Perhaps even more significant are the legal consequences arising from extending the unblocking rules applicable to call aggregators to correctional institutions. The NOI specifically inquires "whether the definition of 'aggregator' should be expanded to apply to correctional institutions." NOI at ¶ 1. It is clear, however, that the Commission's 1991 decision to exempt correctional institutions was based directly on the express language of TOCSIA. Had Congress intended to extend unblocking requirements to prisons and jails, it easily could have done so. By the same token, had TOCSIA contemplated granting the Commission with the authority in its implementing regulations to "expand" the scope of the statutory obligations, there undoubtedly would be some language to that effect. Whether the Commission concludes that the TOCSIA unblocking or other requirements should be expanded to include correctional institutions, it may not do so on its own motion. In order to reverse the 1991 exemption of correctional institutions, the Commission first needs to have Congress amend the Communications Act to give it the power to do so.[33]

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[32] Even OSPs that provide automated calling card and operator services generally do not have the necessary network capability to identify and block inmate access to the OSPs' operator center. Thus, applying unblocking requirements to inmate services would give inmates access to live operator services as well. Inmates could simply remain on the line, bypassing the calling card database, and then either con or harass operators into completing their calls. As Ameritech confirmed, inmate-originated calls "could easily be processed as calling card calls" by most OSPs because there is no unique prison line identifier in widespread use by LECs today, but rather only a "generic alternate-billing-only" code that is associated with numerous applications other than correctional facilities. Ameritech Comments, CC Docket No. 92-77, at 12-13 (filed Aug. 1, 1994).

[33] Inquiring "whether the goals of Section 226 and the public interest have been met through [the Commission's] current treatment of inmate-only telephones in correctional institutions," NOI at ¶ 10, merely begs the question. Neither the "goals" of TOCSIA (codified as Section 226 of the Communications Act) nor the general "public interest" provisions of the Communications Act can give the Commission the authority to promulgate regulations that directly contradict the scope of TOCSIA.

In any event, even if the Commission had the regulatory authority to deviate from the Act by including correctional institutions in the definition of "aggregator" applicable to hotels, motels and airports—which it does not—it should not do so. Extending unblocking requirements to this highly specialized market is not only unjustified, but would fundamentally and improperly curtail the delivery of vital services—as well as sophisticated customer premises equipment—to this nation's local, state and federal correctional facilities. As in 1991, the inmate services marketplace continues to exhibit "exceptional circumstances" that warrant exemption of inmate-only telephones, and their serving carriers, from the unblocking and related requirements imposed on aggregators and OSPs.

IV. THE COMMISSION SHOULD NOT ISSUE AN NPRM THAT DUPLICATES THE ONGOING BILLED PARTY PREFERENCE DOCKET AND WHICH MAY RESULT IN INCONSISTENT OR CONTRADICTORY DECISIONS

The NOI's inquiry into possible changes in the regulatory status of inmate services also raises significant questions of administrative procedure and efficiency. Judging from the NOI's discussion, the principal concern of the Common Carrier Bureau's Enforcement Division appears to be that the absence of carrier choice from inmate-only telephones diminishes rate competition and results in unreasonably high charges for inmate collect calls, NOI at ¶ 9. Yet this is precisely the same issue under consideration in the billed party preference proceeding, presently pending before the Bureau's Program & Policy Planing Division.[34] For instance, the BPP Further Notice asks whether the Commission should "exempt inmate telephones

[34] See Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 9 FCC Rcd. 3320, ¶¶ 42-46, 51 (released June 6, 1994)("Further Notice").

from BPP . . . particularly with respect to the effectiveness and costs of controlling fraud originating on inmate lines with or without BPP.[35]"

There is no legitimate administrative reason to duplicate the public comments received in the BPP proceeding relative to inmate services, rates and possible alternative means of meeting the fraud control and security requirements of correctional institutions. The BPP docket includes voluminous comments and ex parte submissions on the rates and rate structures for inmate services, on the necessity of limiting inmate services to collect calls, and on the fraud risks that would result from changes in the regulatory treatment of inmate services. The NOI notes the existence of the BPP docket, but fails to recognize that the issues presented in that proceeding are exactly the same as those on which the NOI seeks comment.

Given the comprehensive record on inmate services already compiled in CC Docket No. 92-77, there is no reason for the Commission to issue an NPRM on inmate service regulation in this docket. The record in that proceeding demonstrates conclusively that BPP would impose substantial costs and greatly increase problems of fraud and security for correctional institutions. Gateway submits that no action is necessary in this Docket. But whatever action the Commission decides to take on inmate services should occur in Docket 92-77, not in a new rulemaking duplicating the issues and record raised there. Indeed, by initiating an NPRM in this proceeding before the FCC releases an order in the billed party preference docket, the Commission would risk imposing inconsistent or contradictory rulings, leaving the industry, correctional institutions, inmates and their families in an unnecessary state of confusion.

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[35] Further Notice, at ¶ 51.

There is also another parallel between the BPP proceeding and this docket. In both instances, the Commission has suggested that rate "excesses" in inmate services require a regulatory reaction. In both cases the response suggested is a generic regulatory change that would eliminate opportunities for all inmate service providers to remain as the default carrier at correctional institutions, regardless of whether any individual carriers charge reasonable rates. As one of the carriers in the inmate services market that remains as proud of its rate levels as it is of its service quality and commissions, Gateway takes strong offense at these indications of an overbroad regulatory reaction. The Commission is in no position to find that inmate service rates are excessive unless and until it brings rate enforcement proceedings under Sections 201(b) and 202(a) of the Act against specific inmate service providers.

Nor can the Commission fairly conclude that access to other carriers for inmate communications is necessary to prevent rate abuses when it has not once, to date, sought to bring rate enforcement proceedings against any inmate services provider. Opting to require unblocking at all correctional institutions, on the record presently before the Commission, would be the use of a sledgehammer to squash an ant. While there may well be a handful of inmate service providers charging unreasonable rates, there has been no suggestion—especially from those carriers and interest groups supporting carrier choice for inmate services in the BPP docket—that the number of firms with excessive inmate collect rates is too large for the Commission to control with proper use of its existing enforcement powers. Commission action on inmate service rates—whether changes in routing obligations or the "rate

cap" discussed in the BPP Further Notice—should be a last resort, an option chosen only if traditional rate enforcement procedures prove ineffective.[36]

V. THE COMMISSION MAY WANT TO CONSIDER REGULATORY CHANGES, CONSISTENT WITH TOCSIA, TO PROMOTE INFORMED INMATE SERVICE CONSUMERS

There are two affirmative regulatory changes that the Commission may want to consider that do not present the same statutory, policy and empirical deficiencies associated with reversing the 1991 exemption of correctional institutions from the Commission's aggregator unblocking requirements. Both of these changes would serve to increase the amount of information available to inmates and their called parties, thus promoting an informed inmate services marketplace.

First, the same "double-branding" requirement proposed for application to OSPs providing collect calls (see NPRM ¶¶ 3-5) could be applied to inmate service providers without generating a conflict with TOCSIA. Identifying the inmate service provider both to the inmate and the called party would protect consumers interests in knowing the serving carrier, particularly for the called party, who is responsible for paying collect charges. Gateway presently double-brands all its inmate services traffic, but there are many carriers that do not currently do so.

Particularly if the Commission is interested in providing consumers with the information necessary to make informed purchasing decisions, this double-branding requirement should be coupled with a rule obligating inmate service providers to quote rates to the called party prior to requesting the called party's acceptance of

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[36] Gateway has previously noted that Commission prescription of a general rate cap or benchmark for inmate services is not permissible under TOCSIA's specific and limited rate regulation powers granted the Commission for operator services in general. See Gateway 1994 BPP Comments at 24-25 n. 48.

the collect call. Not only is there no current requirement for interstate charges to be revealed on request, but there is no procedure in place for assuring that called parties can learn the cost of a call prior to making the decision whether to accept collect charges. As Gateway has proposed in the BPP docket, the Commission should require that rate quotations be made available for inmate services in real-time—without requiring called parties to make a separate inquiry, for instance via an "800" number—in order to protect end users. The mandatory provision of such information would also serve the important ancillary objective of providing a better factual basis for consumer complaints to the Commission and, perhaps, supply the Commission with ammunition on which to base rate enforcement proceedings against unscrupulous inmate service providers.

CONCLUSION

There is no statutory, policy or empirical reason for the Commission to modify its 1991 decision exempting firms providing inmate-only communications services from the unblocking and related requirements applied to call aggregators and OSPs. Accordingly, there is no need or basis to issue an NPRM on inmate services in this docket. Whatever regulatory action is deemed necessary for correctional institutions—and Gateway submits that none is required—should be based on the comprehensive record on inmate service issues already compiled in the BPP proceeding.

Respectfully submitted,

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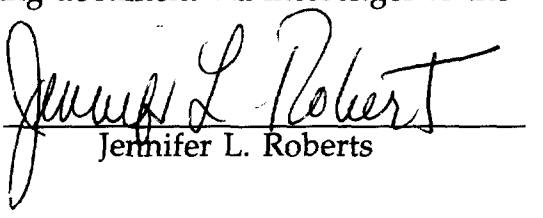
Dated: March 9, 1995.

CERTIFICATE OF SERVICE

I, Jennifer L. Roberts, do hereby certify on this 9th day of March, 1995, that I have served a copy of the foregoing document via messenger to the parties below:



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